

**MEMORANDUM OF UNDERSTANDING  
BETWEEN AND AMONG THE CITY OF SAN JOSE,  
iSTAR SAN JOSE, LCC, FWSH PARTNERS II, LLC, AND  
EARTHQUAKES REAL ESTATE, LLC**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), entered into as of \_\_\_\_\_, 2013 (the “Effective Date”), is by and among the CITY OF SAN JOSE, a California charter city (the “City”), iSTAR SAN JOSE, LLC, a Delaware limited liability company (“iStar”), FWSH PARTNERS II, LLC, a Delaware limited liability company (“FWSH”), and EARTHQUAKES REAL ESTATE, LLC, a Delaware limited liability company (“Earthquakes Real Estate”). The City, iStar, FWSH and Earthquakes Real Estate shall each be referred to herein as a “Party” and collectively as the “Parties.” iStar, FWSH and Earthquakes Real Estate shall collectively be referred to herein as the “Developers.”

**RECITALS**

A. iStar owns an approximately ~~78-acre~~76.2 acre parcel of real property located in the Edenvale area of the City of San Jose, County of Santa Clara, which property is commonly known as the iStar site (the “iStar Site”). The iStar Site currently has a General Plan land use designation of Combined Industrial/Commercial in the Envision San Jose 2040 General Plan and is within a Planned Development zoning district that allows commercial and office/research and development (R&D) uses.

B. The City is the fee owner of real property located in the Cities of San Jose and Santa Clara, County of Santa Clara, commonly known as 1125 Coleman Avenue (the “Airport West Site”).

C. Major League Soccer, L.L.C., a Delaware limited liability company, has granted Earthquakes Soccer LLC (“Earthquakes Soccer”) the exclusive right to operate a Division I men’s outdoor professional soccer team in the San Jose area, commonly known as the San Jose Earthquakes (the “Team”).

D. Earthquakes Soccer LLC acquired from the City an approximately 14-acre portion of the Airport West Site (the “Stadium Site”) for the purposes of developing thereon a major league soccer stadium not to exceed 18,000 seats (the “Stadium”) for use by the Team. Earthquakes Soccer subsequently transferred the Stadium Site to Earthquakes Stadium, LLC, a Delaware limited liability company (“Earthquakes Stadium”). Earthquakes Stadium is an affiliate of Earthquakes Real Estate.

E. A Planned Development Permit to allow for the construction of an outdoor soccer stadium with a capacity of up to 18,000 people on the Stadium Site (“PD Permit”) was approved by the City’s Director of Planning, Building, and Code Enforcement on December 14, 2011 and the approval was upheld by the Planning Commission on appeal on February 22, 2012. An Environmental Impact Report, “Airport West Stadium and Great Oaks Place Project EIR”, was

prepared for the Stadium project and certified on March 16, 2010, pursuant to and in compliance with the California Environmental Quality Act. Earthquakes Stadium is constructing the basic Stadium design as approved in the PD Permit.

F. The City completed an extensive master planning effort with Hitachi Global Systems Technology, Inc. to integrate continued employment opportunities for manufacturing and research, high density housing, retail and public open spaces. The City attempted to include the iStar site in the original Hitachi master planning efforts but ~~suspended~~ was unable to conclude those efforts ~~due to minimal interest at that time by the developer of at~~ that time. The resulting planning efforts resulted in the designation of the Hitachi campus area as an Urban Village in the Envision San Jose 2040 General Plan.

G. Developers have been working with the City towards developing the iStar Site as a mixed-use village with a combination of housing, retail and office development complementary to the adjacent Hitachi mixed-use development. The proposed project will generate a significant number of new jobs and revenue consistent with the General Plan through inclusion of a major retailer as well as the aforementioned office and other retail uses. The proposed project is designed to complete the original master planning started with the Hitachi Mixed Use Project with a mix of housing density blended with jobs creating offices and retail uses.

H. Such a development would require a General Plan amendment, an amendment to the Edenvale Area Development Policy and a rezoning, and Developers have partnered with iStar to apply for these required approvals, specifically to modify the General Plan land use designation and zoning from the existing industrial and retail use to allow approximately ~~700~~ 720 residential units and approximately ~~250,000~~ 414,000 sq ft of ~~retail and office uses~~ and to update the Edenvale Area Development Policy to accommodate the proposed mixed-use development onsite and redistribute the existing entitlements from the project site to other locations in the policy area (the "Modification"). The City is currently undertaking, in accordance with the California Environmental Quality Act (CEQA) and Title 21 of the San Jose Municipal Code, the environmental review of the proposed project (referred to herein as the "Great Oaks Project") and Modification, as more particularly described in the development applications submitted to the City.

I. The City is extremely focused on the integration of the Project with the existing Hitachi Mixed Use community to ensure a uniform and consistent mixed-use community. The city also desires to accomplish the goals of the City's Economic Development Strategy.



J. The Edenvale Area Development Policy provides for certain freeway interchange improvements to be constructed in the Edenvale policy area in which the iStar Site is located. Those improvements were anticipated to be funded by the San Jose Redevelopment Agency, which no longer exists. Developers desire to provide a significant contribution toward the funding of these planned interchange improvements.

K. The City also desires the construction of a Stadium comparable to state-of-the-art, nationally acclaimed soccer stadiums recently developed throughout the United States and internationally, which would require significant amenity and cosmetic upgrades to the Stadium as currently planned and approved. The Stadium is listed as a priority goal for the City in its Economic Development Strategy. The Stadium, as approved in the PD Permit, is comparable to a scaled-down version of publicly-funded stadiums. Earthquakes Stadium is prepared to construct these additional enhancements to the Stadium design, which enhancements are detailed on Exhibit A attached hereto (the "Stadium Enhancements") if and only if a source of financing for the increased cost of the enhancements is identified.

L. The City, FWSH, and Earthquakes Real Estate have a common interest in the construction of the Stadium Enhancements, including stadium design upgrades and amenities, which will provide a substantial public benefit and significantly enhance the spectator experience. The City acknowledges that the construction of a privately financed soccer stadium is unique and of great value to the City.

M. The Developers have agreed to pursue the proposed modifications to the General Plan, Edenvale Area Development Policy, and zoning and redevelopment plan applicable to the iStar Site with the understanding that the Modification may facilitate further investment by the Earthquakes in the financing of the construction of the Stadium Enhancements.

N. If the Modification is approved, Earthquakes Real Estate has committed to privately fund the Stadium Enhancements designated by the City and set forth in Exhibit A attached to this MOU.

O. The FWSH, Earthquakes Real Estate and Earthquakes Stadium intend to make certain financial commitments with respect to the construction of the Stadium Enhancements and have requested that the City provide reassurance of the City's intent to duly process the applications for the Modification and continue to negotiate the terms of a Development Agreement for the iStar Site, all of which are subject to City Council consideration and approval. Without in any way relinquishing or diminishing the City's rights and responsibilities to exercise its reasonable discretion and powers in promoting and protecting the public health, safety and welfare in evaluating and considering any development proposal related to the iStar Site or the Stadium, such as general plan amendments, rezonings, development approvals, policy amendments, and related environmental analyses, the City desires to convey through this MOU

its intent to duly process the applications for the Modification and continue to negotiate the terms of a Development Agreement for City Council consideration.

P. The Parties understand and acknowledge that the City is making these assurances to Developers only in light of the potential benefits to the City that may be derived from the development of the iStar Site as proposed, the funding of planned freeway interchange improvements in the Edenvale area, as well as the ability to facilitate the development of a new state-of-the-art professional Stadium. The Parties further acknowledge that should the major retail component of the iStar Site development or the stadium enhancements not be constructed in the near-term, the anticipated benefits to the City will be significantly diminished, and therefore, if such construction does not occur in the timeframe contemplated, the number of permitted residential units in the proposed project will be limited or other alternative benefits will need to be provided by Developer to City.

Q. It is anticipated that the construction of the Stadium and development of the iStar Site will each make a substantial contribution to the economic development of the City in that it will create new, net permanent jobs located within the City, will create substantial new, net revenues for the City, and will create approximately 800 to 1000 permanent jobs within the City based upon analysis of performed by outside consultants.

R. The Parties understand that by their execution of this MOU, the City is not committing to or agreeing to undertake any acts requiring the subsequent independent exercise of discretion by the City or its departments. It is further agreed and understood that this MOU does not create an obligation on the part of City to enter into any agreement that may result from the terms set forth herein. It is expressly acknowledged and agreed by the Parties that, until and unless one or more written agreements are signed by the Developers and approved by the City Council, or its designated official, in their sole discretion, after completion of environmental review in compliance with CEQA, any drafts or other communications incorporating terms set forth in this MOU shall not be used to impose any legally binding obligation on such party or as evidence of any oral or implied agreement by such party to enter into legally binding documents.

## **UNDERSTANDING**

### **I. Development Agreement**

The Parties agree to engage in further negotiations for a Development Agreement for City Council consideration, which Agreement is anticipated to vest certain development rights in the iStar Site and incorporate terms including the following (or substantially similar) basic terms:

A. Parties. The parties to the Development Agreement shall be the City, iStar, FWSH II and Earthquakes Real Estate.



B. Term. The term of the Development Agreement shall be ten (10) years unless earlier terminated, modified or extended by mutual consent of the Parties, subject to the terms and conditions of the Development Agreement.

C. Subject Property. The iStar Site and Stadium Site shall be subject to the Development Agreement. The Parties agree that the Development Agreement shall govern the development of the Great Oaks Project on the iStar Site and affect the construction of the Stadium on the Stadium Site.

D. Vested Rights to Develop the iStar Site. Under the Development Agreement, the Developers shall have vested rights to plan, configure, process, entitle and develop the iStar Site in accordance with, and subject to, the maximum intensity or density of uses(s), the maximum height and maximum square footage of the proposed buildings, maximum number of residential units, provisions for reservation or dedication of land for public purposes, and provisions for public improvements, and other terms and conditions of development applicable to the iStar Site (the "Vested Components") as they shall be established in the following entitlements to the extent approved as of the date of the Development Agreement in connection with the development of the iStar Site:

1. The Modification, i.e., a general plan land use designation as amended, area development policy amendment, and rezoning of a portion of the iStar Site to allow residential and commercial/office uses;
2. The Development Agreement; and
3. Any other development approvals for the proposed iStar Site development issued as of the date the City Council approves for publication the ordinance approving the Development Agreement.

E. Future Discretionary Approvals. It is anticipated that subsequent to the effective date of the Development Agreement, development of the Great Oaks Project will require City approval of one or more future discretionary approvals. The City shall work cooperatively with the Developers to duly process applications for future discretionary approvals consistent with the Vested Components.

F. Developers' Obligations.

1. Stadium Site. Earthquakes Real Estate shall construct or cause the construction of the Stadium with the Stadium Enhancements as described on Exhibit A or as set forth in the Stadium Enhancement exhibit attached to a Development Agreement agreed to by City and Developers; provided that Developers shall not be required to undertake additional Stadium Enhancements beyond those described on Exhibit A as a condition to the Development Agreement. Earthquakes Real Estate shall obtain a Planned Development Permit Adjustment incorporating said Stadium Enhancements. Prior to the approval of a subdivision map for any

residential development of the iStar Site, Earthquakes Real Estate shall submit complete applications for and obtain all required building permits for the construction of the Stadium with the Stadium Enhancements.

2. iStar Site. The Developers shall commence, diligently pursue, and complete the development on the iStar Site, consistent with the Vested Components and in accordance with the agreed-upon schedule set forth in the Development Agreement.

i. Prior to the approval of a subdivision map for any residential development of the iStar Site, Developers shall submit complete applications for and obtain all required building permits for the construction of a major retail use of approximately 125,000 sq ft. depicted on the conceptual site plan included in the rezoning application or other major retail use substantially similar in scale ("Major Retail Use") and the Stadium Enhancements.

ii. The Developers shall ~~close out~~ the building permit for the shell of the building comprising the Major Retail Use prior to the issuance of the certificate of occupancy, either temporary or permanent, for the ~~one-hundredth-three-hundredth~~ ~~(100<sup>th</sup>)~~ (300<sup>th</sup>) residential unit on the iStar Site.

iii. Prior to the issuance of building permits for the last phase of residential development for the proposed project the Developer shall complete (stub out) all infrastructure, including but not limited to water, sewer, roadway and power necessary for the retail and office use on the iStar site. The intent is to ensure that future retail and office development proceed efficiently and in a cost effective manner.

3. Security for Stadium Enhancements. In order to ensure that the Stadium Enhancements are completed by Developers in a timeframe agreed to by City and Developers, shortly after the execution of a Development Agreement pursuant to the MOU, Developers shall provide security, at the option of the City, of either (a) one or more irrevocable letters of credit in the sum equal to the value of the Stadium Enhancements (collectively the "Letter of Credit") or (b) a completion guaranty, in a form acceptable to City, from an individual(s) or entity, acceptable to the City, and not already obligated to perform under a Development Agreement entered into pursuant to this MOU. If provided in the form of the Letter of Credit, the Letter of Credit shall be issued by a national bank or other issuer, with an issuer (the "Issuer") and in a form acceptable to the City and running in favor of the City. The Letter of Credit shall be (i) "callable" at sight in the City of San Jose, irrevocable and unconditional, (ii) subject to the Uniform Customs and Practices for Documentary Credits (1993-Rev) International Chamber of Commerce Publication #500, (iii) fully assignable by the City, and (iv) maintained in effect, through the term of a Development Agreement.

4. Traffic Infrastructure. Developers agree to pay to the City, by wire transfer to an account selected by the City, a contribution in the total amount of Six Million ~~Dollars~~ (\$6,000,000.00) to defray the cost of transportation improvements at the interchange of US 101/Blossom Hill/Silver Creek Valley Road as described in the Edenvale Area Development



Policy ("Transportation Improvements Contribution"). FWSH and iStar shall pay the Transportation Improvements Contribution in full, in the amount of Six Million Dollars (\$6,000,000.00), ~~on or before the date that the first Certificate of Occupancy, either temporary or permanent, authorizing the occupancy of any residential unit on the iStar Site is issued, according to a formula agreed to between Developers and the City in the Development Agreement.~~

**G. City's Obligations.** The City shall cooperate with the Developers to duly process all discretionary approvals, including permits, agreements, amendments, site plan review, and other zoning and governmental approvals associated with the development of the iStar Site. The City shall accept, process and review all complete applications for entitlements necessary to construct the project on the iStar Site in accordance with the terms and conditions of the Vested Components, including the terms of the Development Agreement, together with all applicable laws, regulations and policies. The City and the Developers shall identify all City approvals required for the Great Oaks Project, develop a schedule to address processing requirements for the various approvals and work together in good faith to ensure review and processing of the necessary applications in a timely manner. All discretionary approvals shall be consistent with the Vested Components. If a Development Agreement includes a specific schedule of performance the parties agree to address the issue of unavoidable delays.

## **II. No City Funds**

**A. No City Funds.** Notwithstanding anything to the contrary contained herein or in any prior oral or written understanding between the City and the Developers, no City funds shall be expended on development or construction of either the iStar Site or Stadium Site, including site preparation, remediation, and off-site improvements, all of which will be solely funded by the Developers.

**B. No Tax Dollars.** As required pursuant to Section 4.95.010 of the Municipal Code of the City of San Jose (the "Municipal Code"), the Parties shall acknowledge and agree that no tax dollars (as defined in the Municipal Code) will be expended by the City for the construction of the Stadium Enhancements.

## **III. Legal**

This Memorandum of Understanding shall be subject to the following provisions:

**A. Disclosure of Confidential Information.** The parties acknowledge that the City is subject to the California Public Records Act ("Act"). The Act generally provides that written documents retained by the City are subject to disclosure upon the request of any third party except for specific limited exceptions provided for in the Act. The Developers shall designate as "Confidential" any information which the Developers provide to the City which the Developers desire to keep confidential. If a request for disclosure of any information designated as "Confidential" by the Developers is made under the Act, the City shall notify the Developers in

writing and the Developers shall have the opportunity to object to the release of such information and seek protection from disclosure by a court of competent jurisdiction. It will be the Developers' sole responsibility to seek such protection from a court.

**B. Full Disclosure and Approval.** Prior to entering into the Development Agreement, the Developers (or their permitted assignees) shall, if required, register and obtain any other governmental approvals necessary to conduct business in the State of California and to own or hold real property in the State of California. The Developers shall provide evidence of its compliance with any such requirements to the City.

**C. Distinction from Regulatory Authority of the City.** All Parties understand and agree that this MOU does not and shall not be construed to indicate or imply that the City, acting as a regulatory or permitting authority, has hereby granted or is obligated to grant any approval or permit required by law for the development of the iStar Site.

**D. Assignment.** None of the Developers may transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of City which may be granted or withheld in City's sole and absolute discretion, and any such attempted assignment without the prior written consent of City shall be wholly void and of no effect.

#### **IV. Legal Effect**

**A. Legal Effect.** This Memorandum of Understanding is merely an expression of interest and understanding and is intended to facilitate the negotiations between the City and the Developers. This memorandum shall not be binding upon the Parties and creates no legal obligations on either Party, including any obligation to negotiate or continue negotiations at any stage. Each Party agrees that it has not relied upon negotiations to date and will not rely upon any subsequent negotiations or drafts of agreements as creating any legal obligations and each Party agrees that they will not create any legal obligations. Legal obligations will only be created, if at all, by a formal development agreement executed and delivered by the Parties. Each Party will bear its own costs in connection with this Memorandum of Understanding and any negotiations, documentation, due diligence, or other undertakings prior to the execution and delivery of a formal development agreement and whether or not it occurs.

**B. No Impact on CEQA Process.** In order to comply with the California Environmental Quality Act (CEQA) and give the public the opportunity to be aware of the environmental consequences of the Great Oaks Project and to fully participate in the CEQA process, the City retains the absolute sole discretion to enter into agreements and modify the project and the project approvals as may, in its sole discretion, be necessary to comply with CEQA, select other feasible alternatives to avoid significant environmental impacts, balance the benefits of the project against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided and/or determine not to approve the project or proceed with or enter into a development agreement.



C. Counterparts. This MOU may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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**CONFIDENTIAL**

**WITNESS THE EXECUTION HEREOF** the day and year first hereinabove set forth.

THE CITY

DEVELOPERS

The City of San Jose,  
a California charter city

iSTAR

By: \_\_\_\_\_

iStar San Jose, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Erich Stiger, Senior Vice President

FWSH

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Ed Moran, Assistant City Attorney

FWSH Partners II, LLC,  
a Delaware limited liability company

By: HS 85, LLC, a California limited liability  
company

By: \_\_\_\_\_  
Edward D. Storm, Manager

EARTHQUAKES REAL ESTATE

Earthquakes Real Estate, LLC,  
a Delaware limited liability company

By: Earthquakes Soccer, LLC, its sole member

By: \_\_\_\_\_  
Keith Wolff, Authorized Signatory



## **EXHIBIT "A"**

### **Stadium Enhancements**

1. **Upgraded Exterior.** A significant upgrade to the exterior skin of the project would add an artistic terra cotta screen wall, or other enhanced façade treatment approved by the City, in lieu of the approved simple metal screen wall with graphics. The total estimated cost of the enhanced terra cotta façade is estimated to be \$4.5M, or an incremental cost increase of approximately \$2.0 million.
2. **Upgraded Seating.** The approved aluminum seating system would be replaced with a special SPS System. The SPS system is a significant upgrade to the sandwich steel system that performs more like a concrete system in terms of quality and acoustics. The SPS System would improve the quality of the facilities and reduce any potential noise impacts to the adjacent residential neighborhood. The incremental cost increase is estimated at \$1.3 million for a total cost of \$4.8 million.
3. **Permanent Concessions.** The planned temporary concessions comprised of tents and kiosks would be replaced with the construction of actual concession buildings, subject to approval by iStar. The incremental cost increase is estimated at \$5 million.
4. **New Scoreboard.** The planned relocation and reuse of the existing scoreboard currently at the stadium in Santa Clara would be replaced with the installation of a new scoreboard. The incremental cost increase is estimated at \$1.7 million.